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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

Nos. 354, 151 and 260

IN THE MATTER OF

UNITED CIGAR STORES COMPANY OF AMERICA,

Debtor.

CAROLINE R. KUEHNER and FREDERICK G. FISCHER, as trustees,

Petitioners in No. 354,

MRS. JOHN S. MEADOWS,

Petitioner in No. 151,

CITY BANK FARMERS TRUST COMPANY, Assignee of Florence H. Bugbee,

Petitioner in No. 260,

against

IRVING TRUST COMPANY, as Trustee of the Estate of the above-named Debtor, *et al.*,

Respondents.

Motion to Advance by Irving Trust Company, as Trustee

and

Consent by Petitioners to Granting of Said Motion and Waiver of Notice Thereof

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New York, November 4, 1936.

WILLIAM D. WHITNEY,
Counsel for Respondent,
Irving Trust Company, as Trustee.

DONALD C. SWATLAND,
R. L. GILPATRIC,
Of Counsel.

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Respondents.

MOTION TO ADVANCE

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Comes now Irving Trust Company, as Trustee, respondent in Nos. 354, 151 and 260, and respectfully

moves the Court to advance the above-entitled causes for hearing on an early day convenient to the Court. On October 26, 1936, this Court granted the petitions for writ of certiorari in such causes and set them down for argument in the order indicated.

All three cases involve questions as to the status of landlords' claims in proceedings under Section 77B of the Bankruptcy Act. Among such questions are the following:

1. Should the statutory provision [Section 77B (b) 10] be construed to limit landlords' claims, for loss of future rent, not theretofore provable in bankruptcy at all, to a maximum of three years' rent (plus accruals) as against the interest of the debtor's stockholders, and if so construed is the provision constitutional? (No. 354.)

2. Does the statutory provision make provable the claim of a landlord who had terminated her lease (which contained no covenant of surviving liability) after its rejection in the prior bankruptcy proceedings of the debtor (No. 260), or the claim of a landlord who accepted a surrender of her lease by assignment and released the debtor from further liability (No. 151), where such termination, surrender and release took place before the enactment of the statute?

3. Does the rejection of a lease, during the prior bankruptcy proceedings of the debtor and prior to the enactment of the statute, constitute the basis of a claim under the statute, notwithstanding

that at the time of institution of the subsequent reorganization proceedings the landlord no longer has a claim enforceable under the substantive law of landlord and tenant (Nos. 151 and 260)?

United Cigar Stores Company of America was adjudicated bankrupt on August 29, 1932 and on June 9, 1934 its petition for reorganization under Section 77B of the Bankruptcy Act was approved. The time for filing claims in such reorganization proceedings as fixed by the District Court expired on October 10, 1934.

Claims and interests of creditors and stockholders of the debtor have been allowed by the courts below in approximately the following amounts:

General creditors, exclusive of Landlord claimants	$4,700,000
Landlord claimants	$3,500,000
Preferred stockholders	171,357 shares
Common stockholders	5,370,660 shares

The respondent Reorganization Committee, consisting of representatives of a substantial proportion of such creditors and claimants and the preferred stockholders, has been engaged in the formulation of a plan of reorganization, and the Trustee is advised that such Committee (subject to the receipt of a report now under preparation by a firm of engineering experts) has carried the draft of plan to an advanced stage of preparation. The grant by this Court of writs of certiorari in the above-mentioned cases has, however, caused uncertainty as to the disposition of landlords' claims totaling approximately $7,000,000 (using the three-

year rent basis provided in Section 77B (b) as a maximum).*

In the opinion of the respondent Trustee, therefore, no plan of reorganization of the Debtor can be consummated until the cases pending before this Court have been determined, and reversal by this Court of the decisions in certain of the above-entitled cases would undoubtedly require changes in any presently prepared plan of reorganization.

This estate, one of the largest being administered by the Federal courts under the provisions of Section 77B, has been pending in administration for more than four years. It is naturally the desire of all parties to return the management of the debtor as promptly as possible to private hands and to effect a distribution to the creditors and stockholders of their interests in the estate of the debtor as promptly as possible. Past delays in reorganization have been unavoidable due to the vast amount of litigation involved, and important causes have been advanced from time to time by the courts below. It is earnestly desired that all future time to be consumed in litigation be shortened in so far as consistent with the convenience of this Court and the requirements of justice with respect to the claims of the creditors involved in these cases.

WHEREFORE, respondent prays that Nos. 354, 151 and 260 be set down for hearing on an early day convenient to this Court, not earlier than December 7, 1936, and that full

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*But even the validity of the three-year rent provision is called in question in No. 354.

time be allowed for the argument of each of said causes which will be presented separately.

WILLIAM D. WHITNEY,
Counsel for Respondent,
Irving Trust Company, as Trustee of the Estate of United Cigar Stores Company of America, Debtor,
Office and P. O. Address:
No. 15 Broad Street,
Borough of Manhattan,
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DONALD C. SWATLAND,
R. L. GILPATRIC,
Of Counsel.

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Petitioner in No. 260,

against

IRVING TRUST COMPANY, as Trustee of the Estate of the above-named Debtor, *et al.*,
Respondents.

CONSENT TO MOTION TO ADVANCE AND WAIVER OF NOTICE

The undersigned hereby waive notice of the foregoing motion and consent to the granting thereof on condition that said causes shall not be argued as one cause but that

full time shall be allowed for the argument of each of said causes..

Dated, New York, N. Y., November 4, 1936.

ROLLIN BROWNE,
RALPH MONTGOMERY ARKUSH,
HENRY L. GLENN,
Counsel for petitioners Caroline R. Kuehner and Frederick G. Fischer, in cause No. 354.

ROLLIN BROWNE,
HENRY L. GLENN,
Counsel for petitioner City Bank Farmers Trust Company, Assignee of Florence H. Bugbee, in cause No. 260.

PERLIE P. FALLON,
Counsel for petitioner Mrs. John S. Meadows, in cause No. 151.

M. CARL LEVINE,
Counsel for respondent Jacob Ruppert Realty Corporation.

MITCHELL, TAYLOR, CAPRON & MARSH,

and

RALPH MONTGOMERY ARKUSH,
Counsel for respondent Landlords' Protective Committee.

SHEARMAN & STERLING,

and

BERLE & BERLE,
Counsel for respondent Preferred Stockholders' Protective Committee.

DAVIS, POLK, WARDWELL, GARDINER & REED,
Counsel for respondent Debentureholders' Protective Committee.

MILBANK, TWEED, HOPE & WEBB,
Counsel for respondent Phoenix Securities Corporation.

WRIGHT, GORDON, ZACHRY & PARLIN,
Counsel for respondent Reorganization Committee.